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March 11, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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MAR 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 92-266
Notice of Ex Parte Presentation

Dear Ms. Searcy:

On March 11, 1993, representatives of Cablevision Systems Corporation ("Cablevision") met with Chairman Quello, Commissioner Duggan, and staff of the Mass Media Bureau to discuss the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). In addition to presenting arguments reflected in Cablevision's written comments in the above-captioned proceeding, Cablevision's representatives provided summaries of the main points of those comments. Two copies of these summaries are enclosed.

This letter is furnished for inclusion in the public record of the above-captioned docket in compliance with Section 1.1206(a)(1) of the Commission's rules. Please direct any questions regarding the foregoing to the undersigned.

Sincerely,

Howard J. Symons

Howard J. Symons

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Cablevision Systems Corporation
Ex Parte Presentation
MM Docket 92-266

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REGULATION OF EQUIPMENT

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Issues

The 1992 Cable Act requires the FCC to adopt standards to establish, on the basis of "actual cost," the rate for the installation and lease of equipment (including converters and remotes) used to receive the basic service tier. Under the House bill, only the equipment necessary to receive the basic tier was subject to regulation. As enacted, however, the scope of rate regulation was expanded to include equipment "used to receive basic service." The effect of this change could be subject to regulation under the actual cost standard converters that are necessary to receive expanded basic tiers or premium services but that are also used to receive the basic tier.

Proposals

"Actual Cost" Standard Should Not Apply to Converters Provided for the Receipt of Expanded Basic Tiers or Premium Services

The Commission should regulate the rates for converters provided for the receipt of expanded basic tiers or premium services under the "bad actor" test for cable programming services. Such a policy is consistent with the language or intent of the statute, which is to ensure the availability of a low-cost *basic* service tier (and associated equipment). Tiers other than the basic tier -- *and the equipment used for those tiers* -- is subject to regulation under the less stringent bad actor test.

Additionally, any equipment provided to receive services at a second outlet should be regulated under the "bad actor" standard. Congress intended to impose basic rate regulation only to the extent necessary to ensure consumer access to an affordable "entry level" package of services and equipment. An additional outlet, and its associated equipment, is a discretionary service not required to meet this statutory goal.

The last-minute change in the scope of the regulation described above, substituting the word "used" for "necessary," was meant only to give the FCC greater authority to protect consumer interests, not to sweep all rates for equipment under the actual cost standard. Such a result would impose a level of regulation on non-basic services that could stifle the continued growth and development of cable.

Equipment Available from Third Parties -- Such as Remotes -- Should be Exempt From Rate Regulation

With respect to the regulation of equipment, the Commission has the authority to "choose the best method of accomplishing the goals of this legislation [i.e., reasonable charges]." Given this grant of flexibility, the Commission can and should find that the market will ensure the reasonableness of the price for remotes and other equipment available for purchase from third parties. (In fact, the statute requires operators to inform consumers of the commercial availability of remotes beginning in April 1994. Cablevision already provides this information to its subscribers.)

Likewise, converters that add incremental features unrelated to the receipt of cable services (such as digital audio) or that incorporate the functionalities of customer premises equipment (such as facsimile machines and handsets for personal communications services) should be outside the reach of equipment regulation. Regulation of these devices will inhibit innovation in the design and development of advanced converters. The Commission long ago deregulated customer premises equipment ("CPE"); the regulation of converters that incorporate CPE capabilities would be tantamount to the unnecessary and counterproductive regulation of CPE.

Two copies of this ex parte presentation have been submitted to the Secretary, FCC.

REGULATION OF ADDITIONAL SET CONNECTIONS

Issue

The 1992 Cable Act requires the Commission to use an "actual cost" basis for standards to establish the rate for "installation and monthly use of connections for additional television receivers." The term "monthly use" is undefined and could be read to refer to the rate charged for providing cable services to a second set.

Proposal

Only the Wiring for Multiple Outlets is Subject to the Actual Cost Standard

The "actual cost" standard applies only to the price charged for installation of the wiring necessary to provide service at multiple outlets and the associated wire maintenance charges. The actual delivery of programming to multiple outlets should be treated as a "cable programming service" subject to "bad actor" regulation. The provision of service beyond the primary outlet is not the sort of "entry level" service encompassed in the statutorily-mandated "basic service tier." It more properly falls into the category of discretionary, non-basic services for which Congress created the less stringent "bad actor" test.

Regulating the rates for wiring separately from the rates for the delivery of service comports with common experience. For example, consumers pay different fees for the installation and maintenance of telephone wiring, on one hand, and the provision of telephone service, on the other hand.

Two copies of this ex parte presentation have been submitted to the Secretary, FCC.

PHASE-IN OF RATE REGULATION

Issue

The precipitous re-regulation of cable service and equipment -- particularly basic service and equipment -- could have significant adverse consequences on cable industry financing and, thus, on subscribers. Most cable operators rely on credit facilities that include debt-to-cash flow covenants and interest-coverage covenants that operators must meet or fall into default. Sudden, sharp reductions in projected revenues (including revenue from the lease of equipment and the sale of programming services) could significantly reduce cash flow to the point where the cable industry's financing is impeded. A financially weakened industry will be far less likely to provide subscribers with a diversity of programming or to make important infrastructure investments. Financial uncertainty could also exacerbate the current credit crunch, putting upward pressure on subscriber rates.

Proposal

Establish Eighteen-Month Phase-In Period

To minimize disruption to the industry and ensure continued service to the public in the manner to which it has become accustomed, operators should be given at least eighteen months to bring their rates into compliance with the new rules. The 1992 Cable Act does not require that rates be "reasonable" as of a date certain. Rather, it requires only that the Commission's rate regulations be in place within 180 days of enactment. The content of these regulations is left to the Commission, which is given broad discretion to determine the most appropriate method of determining reasonable rates. Given the flexibility conferred upon the Commission and its obligation under the Act to minimize the burden on cable operators, the Commission clearly has the authority to adopt a phase-in.

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Two copies of this ex parte presentation have been submitted to the Secretary, FCC.